

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Real Life Broadcasting, Inc.)	File No.: EB-FIELDNER-12-00002778
)	
Licensee of Station WIFI)	NAL/Acct. No.: 20142400004
Florence, New Jersey)	FRN: 0007-66-4493
)	Facility ID No.: 55310

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 28, 2014

Released: May 28, 2014

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Real Life Broadcasting, Inc. (Real Life), licensee of Station WIFI in Florence, New Jersey (Station) apparently willfully and repeatedly violated Section 73.1745(a) of the Commission's rules (Rules),¹ by failing to operate its Station within authorized power limitations. We conclude that Real Life is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000). In addition, no later than thirty (30) calendar days from the release date of this NAL, Real Life must submit a statement signed under penalty of perjury stating that Station WIFI is operating consistent with its license.

II. BACKGROUND

2. Station WIFI's license authorizes it to operate with 5.25 kilowatts during the day and 0.540 kilowatts at night.² On June 6 and June 7, 2012, in response to a complaint, an agent from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) measured the field strength of the Station's transmissions during the day and at night and observed no change in field strength after local sunset time.³ During the month of June, local sunset time is 8:30 p.m. Eastern Daylight Time (EDT) in Florence, New Jersey.

3. On June 13, 2012, agents conducted an inspection with the Station's Chief Engineer and found that a computer that automatically controls the Station's transmitter was programmed with the wrong time for switching from daytime power to nighttime power. Specifically, the computer was programmed to change the Station's power from its daytime power to its nighttime power at 10:30 p.m. for the month of June. In addition, agents took field strength measurements when the Station was operating in daytime mode and nighttime mode from the same location as they had on June 6 and June 7, 2012. By comparing the field strengths associated with each of those modes, the agents were able to confirm the Station's overpowered operation on June 6 and June 7, 2012.⁴

¹ 47 C.F.R. § 73.1745(a).

² See File No. BL-920821AA

³ On June 6, 2012, the field strength was measured at 28 mV/m 7:22 p.m., 8:08 p.m. and 10:00 p.m.. On June 7, 2012, the field strength was measured at 28 mV/m at 8:47 p.m., 26 mV/m at 10:00 p.m., 27 mV/m at 10:18 p.m., and 27 mV/m at 10:28 p.m.

⁴ The measured field strength was 26.5 mV/m in daytime mode and 6 mV/m in nighttime mode. If the Station
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III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁵ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁰

A. Failure to Operate within Parameters of License

5. Section 73.1745(a) of the Rules states that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license, unless otherwise provided in this part.”¹¹ On June 6 and June 7, 2012, an agent observed that the Station operated with daytime power after local sunset time. Based on the evidence before us, we find that Real Life apparently willfully and repeatedly violated Sections 73.1745(a) of the Rules by failing to operate within authorized power limits.

B. Proposed Forfeiture Amount

6. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for exceeding the power limits is \$4,000.¹² In assessing the monetary forfeiture

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switched from daytime to nighttime mode on June 6 and June 7, 2012, the agents would have observed a corresponding decrease in field strength.

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

⁸ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹¹ 47 C.F.R. § 73.1745(a).

¹² *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹³ In doing so, we find that Real Life's prior overpower operations¹⁴ warrants an upward adjustment of \$2,000.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Real Life is apparently liable for a total forfeiture in the amount of six thousand dollars (\$6,000).

7. We direct Real Life to submit a written statement, pursuant to Section 1.16 of the Rules,¹⁶ signed under penalty of perjury by an officer or director of Real Life, stating that the Station is currently operating consistent with its license. This statement must be provided to the Philadelphia Office at the address listed in paragraph 10, below, within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Real Life Broadcasting, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for violations of Section 73.1745(a) of the Rules.¹⁷

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Real Life Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Real Life Broadcasting, Inc. **SHALL SUBMIT** a statement as described in paragraph 7, above, to the Philadelphia Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047. Real Life Broadcasting, Inc. shall also e-mail the written statement to NER-Response@fcc.gov.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Real Life Broadcasting, Inc. will also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ When completing the FCC Form 159, enter the Account Number in block

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ *Real Life Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 11585 (Enf. Bur. 2009) (violated, *inter alia*, Section 73.1745(a) of the Rules by operating with excessive power) (forfeiture paid).

¹⁵ See, e.g., *Pittman Broadcasting Service, LLC*, 28 FCC Rcd 7980 (Enf. Bur. 2013); Donald D. Coss, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16924 (Enf. Bur. 2010) (upwardly adjusting forfeiture due to prior violation of rule at issue); *CBS Radio East Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1293 (Enf. Bur. 2009) (upwardly adjusting forfeiture due to prior violation of rule at issue); *Union Broadcasting, Inc.*, Forfeiture Order, 19 FCC Rcd 18588 (Enf. Bur. 2004) (upholding upward adjustment due to prior Notice of Violation citing multiple violations of the rule at issue).

¹⁶ 47 C.F.R. § 1.16.

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1745(a).

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and include the NAL/Acct. No. referenced in the caption. Real Life also shall e-mail the written response to NER-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Real Life at 2025 Columbus Road, Burlington, New Jersey 08016.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau